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## ELECTION COMMISSION, INDIA

## NOTIFICATIONS

*New Delhi, the 27th February 1953*

**S.R.O. 396.**—WHEREAS the election of Shri Jang Bahadur Singh of Karol Bagh, Delhi, as a member of the Legislative Assembly of Delhi State from the Kingsway Camp Constituency of that Assembly has been called in question by an election petition (Election Petition No. 169 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Ch. Surat Singh of Rajpur Village, Civil Lines, Delhi;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said election petition to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

## BEFORE THE CHAIRMAN, ELECTION TRIBUNAL, DELHI

**ELECTION PETITION NO. 9 OF 1952, UNDER SECTIONS 80, 81, 100, 101, 123, 124 ETC., OF THE REPRESENTATION OF THE PEOPLE ACT 1951 (ACT OF 1951)**

Ch. Surat Singh, Rajpur village, Civil Lines, Delhi—*Petitioner.*

*Versus*

1. Shri Jang Bahadur Singh, House No. 10873, W.E.A., Block No. 5, Karol Bagh, Delhi.
2. Shri Dhanpat Rai IIIC, Reeds Lines, Kingsway Camp, Delhi.
3. Shri Ram Lal Sharma, Quarter No. 180, B. Block, Reeds Lines, Kingsway Camp, Delhi.
4. Shri Sham Dass, Hudson Lines, Kingsway Camp, Civil Lines, Delhi.
5. Shri Seth Shadi Lal, Underhill Lane, Civil Lines, Delhi.
6. Shri Jia Lal, Nehru Kutia, Malkaganj Road, Delhi.
7. Shri Vald Lakhi Ram, No. 3508, Arya Pura, Subzimandi, Delhi.
8. Shri Gurdut Singh Jali, No. 3, Daryaganj, Delhi.
9. Shri Shani Ram, No. 30, Hudson Lines, Kingsway Camp, Delhi.
10. Shri Harnam Das, Barrack No. 114, Kingsway Camp, Delhi.

11. Shri M. L. Batra, P.C.S., Returning Officer, Kashmere Gate, Delhi—  
*Respondents.*

(*Election Petition relating to the Kingsway Camp Constituency, Delhi State Assembly.*)

# BEFORE THE ELECTION TRIBUNAL, DELHI

Chaudhari Surat Singh *Versus* Shri Jang Bahadur Singh etc.

ELECTION PETITION No. 9 of 1952.

## JUDGMENT

Chaudhari Surat Singh petitioner stood for election to the Delhi State Legislative Assembly from the Kingsway Camp Constituency. So did the first respondent Shri Jang Bahadur Singh and also the second and the third respondents Shri Dhanpat Rai and Shri Ram Lal Sharma. Shri Jang Bahadur Singh was declared elected having obtained 4135 votes, while the petitioner obtained 3436 votes. Shri Dhanpat Rai got 226 votes and Shri Ram Lal Sharma 123 votes.

The petitioner challenges the election of the first respondent on three grounds.—

- (1) That the respondent's nomination should have been rejected as it was defective in substance;
- (2) That the respondent was guilty of the corrupt practice of bribery in so far as he induced the second and the third respondents to withdraw from the election on payment of Rs. 1,000 and Rs. 650; and
- (3) That the respondent was guilty of another corrupt practice, namely, the publication of a false statement touching the character of the petitioner and calculated to prejudice his chances of election.

The petitioner further claims that but for the corrupt practices committed by the first respondent he would have been elected and he is, therefore, entitled to be so declared.

The first respondent denies having paid any money to Shri Dhanpat Rai, or Shri Ram Lal Sharma, or having induced them to withdraw from the election. He admits having published certain statements contained in a handbill concerning the petitioner but claims that those statements were believed by him to be true. The respondent, of course, claims that his nomination was proper and it could not have been rejected.

On the pleadings we framed the following issues:—

- (1) Should the nomination of the first respondent have been rejected by the Returning Officer on the ground that the part of the constituency, in which the proposer and the seconder were entered in the electoral roll, was not mentioned. If so, what is the effect?
- (2) Is it not open to the petitioner to raise the plea concerned in issue No. 1?
- (3) Did the first respondent, or his wife on his behalf, publish any false statement of fact concerning the personal character of the petitioner, as mentioned in Clause (c) of Paragraph 6 of the petition, with the object of prejudicing the prospects of the petitioner at the election. If so, what is the effect?
- (4) Did the first respondent pay Rs. 650 to Shri Ram Lal Sharma or Rs. 1,000 to Shri Dhanpat Rai in order to induce them to withdraw from the election contest in favour of the respondent. If so, what is the effect?

The electoral roll relating to the Kingsway Camp Constituency was divided into two parts called the "Civil Lines Police Station" and the "Subzi Mandi Police Station", and each of these parts had separate serial numbers. In the nomination paper filed by the first respondent the name and the serial number of the proposer and the seconder was mentioned but not the part of the constituency, that is, it was not stated whether this serial number was in the Civil Lines part of the constituency or the other. Learned counsel for the petitioner contends that his was a fatal omission and the Returning Officer was bound in law to reject the nomination paper. Counsel relies on Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, which requires "every nomination to be completed in the form specified in Schedule II" which Schedule has a note, No. 6 saying, "where the electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered must also be given in items Nos 8, 10, and 14." The argument is that the Legislature have in this connection used the expression "must" and, therefore, it is absolutely necessary that where the electoral roll is sub-divided into parts a

distinct mention of the particular part, in which the serial number occurs, must be made, and if that is not done, the nomination paper is invalid. We are wholly unable to adopt this view of this particular provision. It is undoubtedly of considerable assistance to the Returning Officer, and everybody else interested in the matter, if not only the serial number of the proposer is mentioned but also the sub-division in the electoral roll in which that serial number occurs, but quite obviously the sole purpose of this is to facilitate identification of the proposer so that no time is wasted in ascertaining whether the proposer is a person qualified to act as such. Where, however, there is no doubt about either the identity of the proposer or his capacity to act as a proposer, a mere omission of a small detail in his description in the nomination paper ought not to affect the matter. Section 36, sub-section (4) of the Representation of the People Act, 1951, under which the rule relied upon by learned counsel is framed, very clearly says that "the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character." We have no doubt that the defect pointed out in this connection was only technical. We say this because both the proposer and the seconder in this particular case were undoubtedly entered in the list of voters, they were both competent to act in the manner they did and there was never any doubt about the identity of either. Learned counsel referred to a previous decision under the Old Act (Malhar Rao Vs. Vishnupant—Sen and Poddar Indian Election Cases page 326), but we notice as mentioned at page 115 of the Law of Elections and Election Petitions in India by Pandit Nanak Chand, (First Edition), that the views of the Election Tribunals were not uniform even under the Old Act and the weight of authority appears to have been on the other side, that a trivial omission of this type ought not to result in the rejection of a nomination. Considering the very clear provision contained in section 36 of the Representation of the People Act, 1951, we have no difficulty in concluding that such omission, when it does not cause any confusion in the identity of the proposer or the seconder, nor any doubt about their capacity to act, cannot invalidate an otherwise valid nomination. We are, therefore, wholly unable to accept the contention that the respondent's nomination should have been rejected by the Returning Officer.

The second issue framed in this connection does not arise in view of our finding on the first issue.

Regarding the third issue, the petitioner's case is that after the official date for withdrawals had passed four candidates were left in the field, namely, Chaudhari Surat Singh petitioner who was the Congress nominee, and Shri Jang Bahadur Singh, Shri Dhanpat Rai and Shri Ram Lal Sharma who were independent, and that on the morning of 12th January 1952—two days before the polling—Shri Jang Bahadur Singh approached Shri Ram Lal Sharma and Shri Dhanpat Rai and put it to them that if any of them was to have any reasonable chance of defeating the Congress nominee, only one of them should fight the election and the other two withdraw in his favour, and that he offered to pay the expenses till then incurred by the other two, that is, Shri Dhanpat Rai and Shri Ram Lal Sharma, if they agreed to withdraw in his favour. The story then is that Shri Dhanpat Rai and Shri Ram Lal Sharma both agreed and Shri Jang Bahadur Singh thereupon paid Rs. 1,000 to Shri Dhanpat Rai and Rs. 650 to Shri Ram Lal Sharma, being the amount respectively mentioned by each. In consequence of this arrangement, it is said, Shri Dhanpat Rai and Shri Ram Lal Sharma publicly withdrew their candidature, that Shri Dhanpat Rai announced his withdrawal at a meeting held on the evening of the same day, that is, 12th January, and Shri Ram Lal Sharma did so the next day. The question is, whether this story about the payment of these two sums of money to these two candidates in order to induce them to withdraw from the contest is true.

Learned counsel for the petitioner very frankly and properly admitted that the standard of proof concerning such a matter must be of the same kind as in a criminal case, and that we must be satisfied beyond all reasonable doubt that this allegation of bribery is true before we can find in favour of the petitioner. We have in this connection considered the evidence of six witnesses, who claim to have been present at the time of the arrangement and the payment of the money, that is, Malik Ganga Dhar (P.W. 1), Shri Ram Lal Sharma respondent (P.W. 4), Shri Dwarka Dass Suri (P.W. 8), Shri Karam Narain Gulati (P.W. 10), Shri Balwant Singh (P.W. 12), and Shri Nand Lal (P.W. 19). Learned counsel relied in particular on the evidence of Shri Ram Lal Sharma and Shri Nand Lal—the former because he was directly concerned in the transaction and received Rs. 650 from the contesting respondent, and the latter because he was the proposer of the contesting respondent when the nominations were filed. Shri Ram Lal Sharma is, however, admittedly an accomplice, and we have necessarily to weigh his evidence with caution. Shri Nand Lal was undoubtedly the proposer of

Shri Jang Bahadur Singh; but there is little doubt in our mind that he subsequently went to the opposite side, and although it is not improbable that he may have been present at such a transaction, if the transaction in fact took place, we do not think there is otherwise any special importance to be attached to his testimony. The general story told by the witnesses is that on the 12th of January eight or nine persons, including the three candidates for election, that is, Shri Jang Bahadur Singh, Shri Ram Lal Sharma and Shri Dhanpat Rai, collected at the shop of Shri Ram Lal Sharma and had a general discussion about their prospects. In the course of this discussion Shri Jang Bahadur Singh pointed out that if all the three of them went to the polls there was little chance of any of them getting more votes than the Congress nominee, and he, therefore, suggested that two of them should withdraw in favour of the third. It appears that nearly everybody present agreed to this. The question then apparently arose concerning the expenses already incurred by the candidates. It was suggested that the candidate willing to pay the expenses incurred by the other two should be allowed to remain in the field and the other two withdraw. Shri Dhanpat Rai and Shri Ram Lal Sharma both said that neither of them was in a position to pay the expenses of the others. Shri Jang Bahadur Singh agreed to pay the expenses of the others, and as Shri Dhanpat Rai said that he had spent Rs. 1,000 and Shri Ram Lal Sharma that he had spent Rs. 650, Shri Jang Bahadur Singh produced the requisite money and paid Rs. 650 to Shri Ram Lal Sharma and Rs. 1,000 to Shri Dhanpat Rai. The story then is that on the evening of that day there was a public meeting and Shri Dhanpat Rai announced his withdrawal and asked his supporters to support Shri Jang Bahadur Singh, and the next day, that is, 13th January in another public meeting Shri Ram Lal Sharma announced his withdrawal. Our impression of this general story is that it is a little too artificial to be true. We have not been particularly impressed by the testimony of any of the witnesses. We do not think it probable that a matter of this kind could have been settled so very amicably in such a short time as is made out, nor does it appear very probable thus that two substantial sums of money could have been paid by the first respondent to the other two at once without obtaining any satisfactory assurance that they would abide by the arrangement. We are fortified in this view by the very significant circumstance that the story originally mentioned in the list of particulars attached to the petition was substantially different from the story narrated in Court. The list of particulars makes out as if there were two separate transactions concerning the payment of the two amounts, that is, one with Shri Ram Lal Sharma which took place on the 11th of January and the other with Shri Dhanpat Rai which happened on the 12th of January. The story narrated before us by the witnesses, however, is that there was one discussion at one meeting on one day, that is, the 12th of January, and then followed the payment of the two amounts of money. Learned counsel for the petitioner had considerable difficulty in explaining this glaring discrepancy in the evidence led by him and the list of particulars, and he could only say that at the time of the drafting of the petition his information, presumably derived from the petitioner, was only this that two sums of money had been paid to the two candidates, and he was not in possession of the details. We have great difficulty in believing that before the petition was drafted the petitioner had not taken the trouble of discovering from the witnesses what the facts concerning this particular matter precisely were. There is a similar discrepancy about the sequel to the payment of money, for it is said in the list of particulars that an announcement concerning withdrawal was made by both respondents on the 12th of January at one and the same time, while it is made out now that one of them announced his withdrawal on the evening of the 12th January and the other the following day.

Apart from these matters, the number of votes actually polled for Shri Dhanpat Rai and Shri Ram Lal Sharma, who are said to have withdrawn from the contest and publicly announced this, does not unmistakably indicate that they had in fact done so. 226 votes were actually cast for Shri Dhanpat Rai, and we hesitate to believe that these 226 voters could all have voted for him without discovering that he had in fact withdrawn and was not soliciting votes. Considering the whole evidence, therefore, we are not fully satisfied that the story about the payment of these two sums of money to Shri Ram Lal Sharma and Shri Dhanpat Rai is really true, and we, therefore, find the issue against the petitioner.

Concerning the 4th issue, it is admitted that Shri Jang Bahadur Singh distributed two handbills—one in Urdu and one in Hindi, which is a transliteration of the first, and each of these handbills contained quite clearly a statement suggesting that the petitioner, Chaudhari Surat Singh, was a bad character No. 10 which, we understand, means a person on a police register bearing that number. Apart from these, a poster (Ext. P/B) was also issued and widely circulated, and although Shri Jang Bahadur Singh does not admit responsibility, we have little doubt that this poster which is very similar to the handbills (Exts. P/A and P/C)

must also have been published with the knowledge or connivance of Shri Jang Bahadur Singh. The handbills, as well as the poster, each contained a very clear assertion that Chaudhari Surat Singh was a bad character. The two handbills in substance said that Chaudhari Surat Singh had admitted before the Tehsildar of Delhi that he had been a bad character on police register No. 10. It was stated that this admission was made when Chaudhari Surat Singh had claimed to be made a Zaildar, that his claim was disallowed by the Deputy Commissioner on the ground of his bad character, and a question was posed why this person, who was considered unfit to be a Zaildar in March 1951 should have been chosen by the Congress as a candidate for the Delhi State Assembly. The poster (Ext. P/B) more directly asserted that the Congress candidate was a bad character on Register No. 10 and the Congress had insulted the electorate by putting him up as a candidate for the Assembly. As we have mentioned, Shri Jang Bahadur Singh accepts responsibility for the handbills in question, and we have no doubt that he is either directly or indirectly responsible for the poster also. It is admitted that the poster as well as the handbills contain a statement of fact touching the personal character of the petitioner, and it has been frankly admitted that the statement was calculated to prejudice the chances of the petitioner at the election, as there could be no other object in publishing these handbills and posters a day or two before the actual polling except to injure the petitioner's prospects. The defence substantially admits that the statement contained in the poster and the handbills was not false, and that it was believed by the respondent to be true and he was, therefore, justified in publishing it. The facts relevant to the consideration of this matter are these:—

Chaudhari Surat Singh as well as some other persons applied for being appointed Zaildar in a vacancy in that office. The preliminary hearing was before the Tehsildar when all the claimants put forward their claims and objections. The enquiry appears to have been made in the beginning of 1948 and the final report of the Tehsildar was forwarded to the Collector on 22nd March 1948. It appears that during the enquiry one of the candidates Chaudhari Fateh Singh, made a written complaint that Chaudhari Surat Singh had been a bad character on Police Register No. 10 and was, therefore, disqualified. The Tehsildar mentioned in his report to the Collector that he had questioned Chaudhari Surat Singh about this particular matter and Chaudhari Surat Singh had admitted that his name had once been on the Police Register but that it was a thing of the past. The Tehsildar did not recommend Chaudhari Surat Singh's appointment and the Collector accepted the proposals made by the Tehsildar. The Collector's final order was made on 27th March 1951. Chaudhari Surat Singh actually appealed against that order to the Chief Commissioner and a copy of the appellate order shows that the Chief Commissioner passed over the claim of Chaudhari Surat Singh largely on the ground that he had once been on the register of bad characters. The question is, whether in the face of these admitted facts anyone would or would not reasonably believe that Chaudhari Surat Singh had been condemned on account of his bad character. We think that if Chaudhari Surat Singh's appointment as Zaildar was considered undesirable on the ground of his past antecedents as his name had once been on the register of bad characters, and that was the view of the Chief Commissioner shortly before the election, a person describing him as a bad character No. 10 would not be acting without probable cause, and we would very much hesitate to say that the maker of the statement believed it to be false. Learned counsel for the petitioner contended that the handbills and the poster made out as if Chaudhari Surat Singh's name was at the time of the election on the register of bad characters, while in fact all that the Tehsildar's report had said was that his name had once been on that register, and it was already in 1948 a thing of the past and that this deviation from the truth makes the statement published by the respondent a false statement. We note that in the handbills, in particular where a part of the report of the Tehsildar is quoted, this particular qualification to the admission made by Chaudhari Surat Singh, that it was a thing of the past, was omitted, but although we are satisfied that this omission was deliberate, we do not think it really affects the matter very much. If the handbills are read as a whole the impression left on the mind is that Chaudhari Surat Singh was held or believed by responsible officers of the Delhi State to be a person of bad character. On the facts brought to light in this case we think the contesting respondent was justified in believing that this was actually so. This matter concerning the character of the petitioner does not really rest at the report of the Tehsildar, and it is not as if Chaudhari Surat Singh inadvertently admitted that his name had been on the police register and the Tehsildar mistakenly accepted this as true. There is substantial foundation for the admission ascribed to the petitioner. He has himself admitted in the witness-box that in 1942 he was suspected in a case of kidnaping and he was required by the police, but as he happened to go away to Dehradun, he was found to be absconding and was proclaimed as such, and proceedings for attachment of his property were also taken. He also admits that he was suspected in a case of dacoity, and was actually committed to stand his

trial in the Sessions Court in the Meerut district in 1943. He was concerned in another case also but that was only under Section 325 I.P.C. The evidence further shows that the police had started a personal file concerning Chaudhari Surat Singh so that quite clearly he was a person of interest to the police. In the face of these facts we are not surprised that Chaudhari Surat Singh admitted to the Tehsildar that he had been on the police register, and since the handbills and the poster complained of merely described him as what substantially he had once been or was at any rate believed by the responsible authorities to have been, we cannot say that the handbills or the poster contained any false statement of fact which the respondent did not believe to be true. We must not be taken to mean that we in any manner approve of the conduct of the respondent in publishing the handbills or the poster. We merely say that in doing so he did not offend against the provisions of Section 123 of the Representation of the People Act, and we, therefore, find the issue against the petitioner.

In the result, the petition must fail and we direct that it be dismissed. Considering, however, that most of the admissions of fact were made by the contesting respondent at a late stage, and considering the other circumstances of the case, we do not think it proper to burden the petitioner with costs, and we, therefore, leave the parties to bear their own costs.

### ANNOUNCED

(Sd.) S. S. DULAT, *Chairman.*

Election Tribunal, Delhi.

The 24th February 1953.

(Sd.) DURGA PERSHAD NAIR, B.A., LL.B., *Member,*

Election Tribunal, Delhi.

(Sd.) R. B. PARSHOTAM LAL, *Member,*

Election Tribunal, Delhi.

[No. 19/169/52-Elec.III.]

**S.R.O. 397.**—WHEREAS the election of Shri V. T. Elaya Pillai, resident of Vadakkanendal, Kallakurichi Taluk, as a member of the Legislative Assembly of Madras from the Kallakurichi constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri K. Parthasarathy, Advocate, resident of Kallakurichi, South Arcot District, Madras State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

### BEFORE THE ELECTION TRIBUNAL, TIRUCHIRAPPALLI

(In the matter of the petition presented by Sri K. Parthasarathy calling in question the Election of Sri V. T. Elaya Pillai as a member of the Legislative Assembly of the State of Madras from the Kallakurichi Constituency (General seat) of South Arcot District.)

### PRESENT

Shi H. Ananthanarayana Ayyar, I.C.S.—*Chairman.*

### AND

(1) Sri L. S. Parthasarathy Ayyar B.A., B.L.,

(2) Sri V. C. Viraraghavan, B.A., B.L.—*Members.*

Thursday, the 19th day of February 1953

ELECTION PETITION No. 108 of 1952

### BETWEEN:

Sri K. Parthasarathy son of Krishnaswami Naidu, Advocate, residing at Kallakurichi in South Arcot District—*Petitioner.*

### AND

1. Sri V. T. Elaya Pillai son of Thevanga Pillai residing at Vadakkanendal in Kallakurichi Taluk.

2. Sri L. Anandan son of Lakshmanan residing at Kachiroypalayam in Kallakurichi Taluk.
3. Sri K. Govindan residing at Neelamangalam in Kallakurichi Taluk.
4. Sri V. Munuswami residing at No. 11-A, Kothavalchavadi Street, Manjakuppam, Cuddalore N.T. in South Arcot District.
5. Sri Pavadai son of Kuppan residing at Chinnasalem in Kallakurichi Taluk.
6. Sri K. N. Rathinam son of Narayanan residing at Kallakurichi Town.
7. Sri Vinaitheertha Pillai son of Kalitheertha Pillai residing at Somandargudi in Kallakurichi Taluk.
8. Sri Natesan son of Pottu residing at Kachiroypalayam Cheri in Kallakurichi Taluk—*Respondents*.

This Election Petition coming on for hearing on the 8th, 9th, 10th, 11th, 15th, 16th, 17th and 18th day of December 1952 and on the 7th, 8th, 9th, 10th, 21st and 22nd days of January 1953 and on the 6th, 7th and 11th days of February 1953 in the presence of Sri K. S. Champakesa Ayyangar, Sri M. Muthuswami Pillai and Sri R. T. Gopalakrishnan, advocates for the petitioner and of Sri N. Rajagopala Ayyangar, Sri S. Kasthurienga Ayyangar, Sri K. Rajagopalachari and Sri G. M. Vridhachalam, advocates for the 1st respondent and of Sri S. P. Thangaveilu, Advocate for the 3rd respondent, and the other respondents not appearing either in person or by pleader and the petition having stood over for consideration till this day, the Tribunal made the following—

#### ORDER

Petitioner has filed this petition praying for the following reliefs:—

- (a) declaration that the election of the 1st respondent (Elaya Pillai) to the General Seat in Kallakurichi Constituency is void;
- (b) declaration that the petitioner has been duly elected; and
- (c) other incidental reliefs.

2. Kallakurichi in South Arcot District is a double member constituency. In the election held on 2nd January 1952 to the Madras State Legislative Assembly, the petitioner and respondents, 1, 4 and 6 were the candidates for the general seat. Petitioner was the candidate on behalf of the Congress Party; the 1st respondent was an Independent candidate; respondents 2, 3, and 5 were candidates for the Reserved Seat. In the election, the 1st respondent was declared elected to the General Seat, and the 2nd respondent to the Reserved Seat. Respondents Nos. 7 and 8 are candidates who withdrew after being duly nominated.

3. Petitioner is a practising Advocate of Kallakurichi. He is also the Vice-President of the District Board of South Arcot. Elaya Pillai (1st respondent) is a well-to-do-Mirasdar residing at Vadakanendal in Kallakurichi Taluk. He was also the Isum (hereditary-registered) Village Munsif of Vadakanendal Vattam. On 1st October 1951, he tendered his resignation of the post, and it was accepted by the Revenue Divisional Officer, Thirukoilur, on 7th November 1951. On 19th November 1951 he filed his nomination paper. He was also President of the Taluk Branch of the Village Officers' Association at Kallakurichi, till he resigned on some day after 7th November 1951 and before 19th November 1951.

4. On 23rd September 1951, a Conference of the District Village Officers' Association of South Arcot was held at Cuddalore. It was presided over by an ex-Village Munsif of Nellikuppam, Hameed Sahib (P.W. 1). The 1st respondent (who was then a Village Munsif in Office) attended. At this meeting, 10 resolutions were moved from the Chair and unanimously passed. Of these, the resolutions Nos. 8 and 10 are as follows:—

(No. 5. This Conference appeals to all Village Officers and the Executive Committee members of all Taluk Branch Associations of this district, towards setting up of and for the victory of persons of good knowledge from among this organisation and from the general public to the Madras and Central Legislature at the general elections to be held in the country. \* \* \* \* \*

No. 10. This conference appeals to all for the setting up of and for obtaining victory at the ensuing general elections, of Sri V. T. Elaya Pillai the Headman and a well-known Mirasdar of Vadakkanendal in Kallakurichi Taluk, of Janab A. A. Hameed Sahib of Nellikuppam in Cuddalore Taluk and of Sri N. A. Muthuveera Reddhar Village Munsif of Nathapattu.)

5. Subsequently on 4th November 1951, a general Body meeting (or conference) of the Village Officers of Kallakurichi Taluk took place at Kallakurichi. Ramaswami Ayyar, Secretary of the Provincial Village Officers' Federation (P.W. 2), presided. Some resolutions were passed at that meeting. P.W. 2, as President of the Conference entered those resolutions in the Minutes Book of the Taluk Association and signed his name. Those resolutions are not available as the Minutes Book is not forthcoming. At that meeting also, the 1st Respondent was present. He was then the President of the Taluk Association.

6. The 1st Respondent owned a car. Some time prior to the election, he also purchased a Van No. MDS: 1833. This van and the car were used for election purposes. In connection with this election, the 1st respondent issued several pamphlets and notices including Ex. A-6 to A-9 and A-16, which run as follows:—

“I have come forward to stand as a candidate for the above constituency on behalf of the taluk ryots, toilers, and village officers, as an Independent, without any party feeling, hoping to receive the kind support and blessings of the villagers, ryots, agriculturists and the public.

It has been resolved in the Conference of the Village Officers of the South Arcot District held at Cuddalore on 23rd September 1951 to select me as a Candidate to the Legislative Assembly as a representative of the Village Officers. \* \* \*”).

7. Among the notices issued on behalf of the 1st respondent is one (Ex. A-17) which simply gives the symbol of the 1st respondent and urges the voters to put their votes into the box bearing the symbol (i.e. lotus). It shows that it was printed by the Royal Press, Athur, under order No. 624 dated 16th December 1951. It does not contain the name of the 1st respondent or of any one else as publisher. But the 1st respondent admits having issued these notices. The charges for printing those notices are included by the 1st respondent in his election expenses.

8. The main contentions in this petition are as follows:

“The 1st respondent who was then the Village Munsif of Vadakanendal attended the Conference (on 23rd September 1951) in which a large number of Village Officers were present and it was announced that the 1st respondent would be a candidate, and, therefore, he solicited their help”. Resolution No. 10 passed at the District Conference was printed and distributed in Kallakurichi in November 1951. At the Kallakurichi Conference on 4th November 1951, the 1st respondent solicited and secured the support (in the election) of the large number of village officers, thotties and thalayaries who attended it. He arranged for the feeding of those people and actually fed them in his house at Kallakurichi. The aim and object of the 1st respondent in publishing notices Exs. A-6, A-7 and A-16 were to get assistance from the Village Officers and for inducing the people to vote as per directions of the Village Officers, who wielded enormous influence in the villages. The 1st respondent secured the active help of V. Rajagopal Naidu (R. W. 16), the Village Munsif of Ravuthanallur, for the election. The latter visited many villages during the period 5th October 1951 to 2nd Jan. 1952, utilising a vehicle provided by the 1st respondent, and he (V. Rajagopal Naidu) canvassed votes for the 1st respondent. On 2nd Jan. 1952, this V. Rajagopal Naidu took this van to a place within 100 yards of the polling station at Birmakundam. This van was exhibiting the symbol, placards and notices of the 1st respondent. The 1st respondent has committed an illegal practice by his issue of notice Ex. A-17 which does not give the name of the publisher.

9. The 1st respondent filed a counter as follows:—The 1st respondent never solicited or procured or attempted to procure the assistance of any village Officer. The 1st respondent was merely present at the Cuddalore Conference. He was not connected with it in any other way. It is not true that the resolution of Cuddalore Conference was printed and distributed at Kallakurichi in November 1951. The 1st respondent had nothing to do with the printing or distribution of the resolution. At the Kallakurichi Conference also, the 1st respondent never requested the village Officers to work for him nor did he feed any of the delegates to the Conference or arrange to feed them at his cost. In the notices Exs. A-6, A-7 and A-16 issued by him, the 1st respondent merely stated that he was offering to come forward as the representative of all ryots. He incidentally also mentioned that he stood on behalf of the village officers also, since the village officers at their meeting on 23rd Sept. 1951 had unanimously requested him to stand for the election. The Government had issued messages and the Collector's Office also issued proceedings stating that the village Officers should not work for any candidate. No village Officers worked for the 1st respondent. He did not take their assistance. The Secretary of the



Kallakurichi Taluk Branch (of Village Officers' Sangam) also issued circulars on 7th November 1951 and 1st December 1951 (Exs. B3 and B4) in consonance with the orders of Government (Exs. B2 and B5) asking them not to take sides in the election. To the same effect, a resolution was passed by the General Body of Kallakurichi Branch of the Village Officers' Sangam on 30th November 1951. The 1st respondent cannot be said to be a candidate before his resignation was accepted on 7th November 1951. 1st Respondent never sought the help of Rajagopal Naidu for securing his election. The latter was on long leave from August 1947 onwards. No vehicle was entrusted to him. The allegations made about the alleged part played by V. Rajagopal Naidu are incorrect and false. In Ex. A-17 the printer himself is the publisher as usual.

10. The 3rd respondent filed a counter stating that if the 1st respondent's election was set aside, then the 2nd respondent should be declared the successful candidate for the General Constituency and that the 3rd respondent must in turn be declared elected to the Reserved Seat. The other respondents did not file any counter.

11. The following issues were framed:—

- (i) Whether the 1st respondent obtained or procured or abetted or attempted to obtain or procure directly or through others, the assistance of the Village Officers of South Arcot District, and particularly those of Kallakurichi Taluk, for the furtherance of the prospects of his election, as mentioned in para. IV of the petition?
- (ii) Whether undue influence was exercised on the electors as alleged in paras. IV (c) and (d) of the petition, through the Village Officers of South Arcot District and, if so, whether the exercise was done with the knowledge or connivance of the 1st respondent?
- (iii) Whether the notice dated 16th December 1951 published by the 1st respondent and referred to in para. IV (e) of the petition offends the provisions of Section 125(3) of the Representation of People Act 1951, and amounts to an illegal practice, and, whether the result of the election has been materially affected thereby?
- (iv) Whether the ballot papers authorised for use at the election for Cuddalore Constituency of the House of the People were found in one booth in each of the polling Stations 10, 58 and 86, whether they were improperly received or polled or counted as valid votes, and, whether the result of the election has been materially affected thereby as mentioned in para. IV (f) of the petition?
- (v) Were votes polled regarding deleted voters Nos. 37, 78, 101, 104, 125 and 139 in the Polling Stations Nos. 53 and 63, Alathur Village, and whether the result of the election has been materially affected thereby as mentioned in para IV(g) of the petition?
- (vi) Whether there was non-compliance with the rule 37 relating to postal voting, and, whether the result of the election has been materially affected thereby as mentioned in para. IV(h) of the petition?
- (vii) Whether there was any irregularity such as suggested in paragraph V, and, if there was, whether it can in any case affect the result of the election, and whether it constituted a contravention of rule 46?
- (viii) Whether the petitioner is entitled to all or any of the reliefs prayed for in the petition?

12. The learned Advocates for the petitioner gave up issues Nos. 4 to 7.

13. Petitioner deposed as P.W. 12 and also examined 11 other witnesses. 1st respondent examined 19 witnesses of whom he is himself R.W. 19. Both sides filed a number of documents shown in the appendix to this order.

14. Issue 1.—The case for the petitioner as put forward through the witness P.W. 2 is to the effect that in the morning of 23rd September 1951 at about 9-30 A.M., R.W. 17 (an Advocate of Kallakurichi) brought the 1st respondent to him in Brindavanam Hotel, introduced the 1st respondent, requested P.W. 2 to propose him in the Conference as a candidate for election, that thereupon P.W. 2 agreed and that accordingly, at the Conference he included the name of the 1st respondent in resolution No. 10. This evidence is not corroborated by any other witness. The 1st respondent (as R.W. 19) and R.W. 17 deny the truth of this version altogether. R.W. 17 says that he met P.W. 2 in the morning, but did not talk

anything about the elections or about the 1st respondent and that the 1st respondent was not at all present there. The version of P.W. 2 is that at the time when the alleged meeting and talk took place many village Officers were present (some of whom are specified by P.W. 2 by name). None of them has been examined to corroborate P.W. 2. Further, this alleged meeting and conversation are not referred to in the petition at all. In these circumstances, the incident is not satisfactorily proved.

15. It is not petitioner's case that at the Conference itself the 1st respondent in any manner offered himself, i.e. held himself out as a candidate or solicited the help of any person for his election, apart from his mere presence when the resolutions were passed. His mere presence is alone mentioned by the petitioner in his petition as the ground to hold that he solicited the help of the village officers. But we do not agree with that contention. There is no reliable evidence to show that 1st respondent was aware of the resolution No. 10 before it was read out for being passed. Also he was not under any obligation or duty to prevent the resolution No. 10 from being passed. It is in evidence that all the ten resolutions were put *en bloc* from the Chair by the President P.W. 1 and unanimously passed. On the evidence, it cannot be said that he connived at this resolution being passed.

16. By the date of the Kallakurichi Conference, i.e., 4th November 1951, the 1st respondent had begun holding himself out as a candidate. He had sent in his resignation on 1st October 1951 and also got the notice Ex. A-6 printed. The evidence on the side of the petitioner is that at this Conference, P.Ws. 2, 4, etc., made speeches and passed a resolution that the 1st respondent should be supported in the election and that the 1st respondent made a suitable reply expressing pleasure and thanks. On the other hand, the 1st respondent (as R. W. 19) and the Secretary of the Taluk Village Officers' Association, (R. W. 3) assert that there was no discussion about the election of about the 1st respondent standing for election at all and that no resolution was passed except regarding matters contained in the notice Ex. B-1 which was issued for the meeting. R. Ws. 8 and 9 also deposed similarly.

17. It is the case of both side that the resolutions passed at this Kallakurichi Conference were recorded in the Minutes Book of the Taluk Village Officers' Association and signed by P.W. 2. This Minutes Book has not been made available to us. It is admitted that, ordinarily, this minutes book ought to be in the custody of the Secretary of the Taluk Village Officers' Association, R.W. 3. But he did not produce the Minutes Book. He explained as follows:—R.W. 3 received a letter Ex. B-13 dated 29th November 1952 purporting to be signed by Srinivasam Pillai (Treasurer of the District Village Officers' Association) on behalf of the Secretary P. W. 2, inviting R. W. 3 to attend the District Village Officers' Executive Committee meeting to be held at Villupuram on 5th December 1952. It contains a post-script requesting that R. W. 3. should bring with him the minutes book of the Kallakurichi Branch. R. W. 3 could not come and attend the meeting. But, Periasami Pillai, a member of the Executive Committee of the Taluk Sangam went for the meeting. R. W. 3 handed over the minutes book to Periasami Pillai (for being delivered to P. W. 2) and obtained from him the receipt Ex. B-14.

18. After examination of R. W. 3, who gave the above explanation (on 7th Jan. 1953), the 1st respondent did not take any further steps to get the minutes book produced into Court. In particular, he did not attempt to summon Periasami Pillai or to recall P. W. 2 to find out what happened to the minutes Book. Exs. B-13 and B-14 and the oral evidence of R. W. 3 do not constitute sufficient or reliable proof that the minutes book did reach P. W. 2 and that it was in the custody of P. W. 2. The wording in the receipt Ex. B-14 contains practically the full version of R. W. 3 about the minutes book having left his (R. W. 3's) hand. This is rather an unduly and suspiciously elaborate form of receipt for a register being handed over by a Secretary of the Taluk Village Officers' Association to a responsible member of the Executive Committee of the Association. It is also difficult to see why the minutes book of the Kallakurichi Taluk Association was necessary to P. W. 2 in connection with the District Village Officers' Association meeting to be held at Villupuram on 5th December 1952, for discussing matters which are mentioned in the post-card Ex. B-13.

19. The petitioner and the 1st respondent has each made only a half-hearted attempt to prove his case about the alleged resolution, but failed to complete his attempt and chose to content himself by throwing the blame on the other party and by trying to raise an argument of presumption against the other party. We feel that the evidence on record and the conduct of the parties do not form sufficient basis to warrant an assumption against either petitioner or the 1st respondent about the non-availability of the minutes book.

20. There is no reference to the passing of such resolution and recording of such resolution in the petition or the list attached thereto. The petition merely says that the 1st respondent attended the Conference. In the notices Ex. A-6 to A-9 and A-16, printed by the 1st respondent, there is no reference to any resolution about the elections at the Kallakurichi Conference. Considering the fact that the resolution No. 10 passed at the District Village Officers' Conference is quoted in the notices, it is quite likely that if there was similar resolution passed at the Taluk Conference, the 1st respondent would have at least referred to it in his notices. The notice Ex. B-1 issued for the agenda regarding the Kallakurichi Conference makes no reference to election or to the 1st respondent. The burden of proof that a resolution was passed about the 1st respondent's standing for election at the Kallakurichi Conference was on petitioner himself. He failed to discharge that burden.

21. We find that the petitioner has failed to prove satisfactorily that any resolution was passed about the elections or in favour of the 1st respondent or that the 1st respondent sought the help of village officers at the Kallakurichi Conference.

22. As regards the notices (Exs. A-6 to A-9 and A-16) Ex. A-6 is a typical notice which I have already extracted in paragraph 6 of this order. The first paragraph of this notice mentions that the 1st respondent stood on behalf of the village officers. But it does not say that he stood on behalf of the village officers alone, or, that he relied upon the votes of the village officers alone. He says that he stood on behalf of the village officers and also on behalf of the cultivators and the toilers, and explained in particular that he did not stand on behalf of any particular party ( ). It appears from the evidence that the 1st respondent was a big mirasdar, i.e. cultivator and could also claim to stand on behalf of toilers ( ) in addition to being a man who was a village officer by birth and by service and status, till he resigned for the purpose of election. Para 3 of the notice simply asks recipients of the notice to individually cast their respective votes in favour of the 1st respondent and enable him (the 1st respondent) to win the election as their representative. It does not particularly ask the recipients of the notice to canvass for the 1st respondent and obtain the votes of others for the 1st respondent. Though the plural is used i.e. ( ) the words give sufficient indication to show that the recipient or recipients of the notice were asked just to cast their votes and were not asked to do any canvassing.

23. Paragraph 2 of the notice simply mentions what the village officers had decided at the Cuddalore Conference in resolution No. 10. This reference does not amount to a request to the village officers or recipients of the notice to do any unlawful act in furtherance of his election, or, in particular to do any canvassing. There is no sufficient ground to warrant a presumption that the 1st respondent's aim in issuing the notices was to secure votes to be got by village Officers in a manner prohibited by law (under Section 123). It was perfectly legitimate for the 1st respondent to ask for the votes of the village officers, and for that purpose to point out to them the resolution of the Association of those village officers themselves.

24. Now, going to item 5 of the list attached to the petition the petitioner's case is that the 1st respondent sought the help of V. Rajagopal Naidu, the village Munsif of Ravuthanallur and that the latter in compliance with the 1st respondent's request canvassed votes for the 1st respondent in many villages from 5th October 1951 to 2nd January 1952 and also made use of a vehicle which was left by the 1st respondent with him for the purpose 4 days prior to 2nd January 1952. P.Ws. 3, 4 and 7 to 11 deposed about the canvassing of work done by R.W.-16 and about his use of the van. In addition, P.W. 3 deposed to have been present when the 1st respondent asked R.W.-16 in the latter's house at Ravuthanallur to canvass for him (1st respondent) and when R.W.-16 agreed to do so. P.W. 3 says that about a week prior to the election, the 1st respondent sent his van to R.W.-16 and that from then onwards, R.W.-16 went about in the van to various villages, doing electioneering work for the 1st respondent.

25. P.W. 3 deposed to canvassing by R.W. 16 in Ravuthanallur. P.W. 4, who is the karnam of Melsiruvallur, says that R.W. 16 came to him twice or thrice in the 1st respondent's car and gave him notices Exs. A-7 and A-8 and that on one occasion, he (R.W. 16) was accompanied by the 1st respondent. P.W. 7 is the Village Munsif of Kadambur. He speaks to having witnessed canvassing by R.W. 16 for the 1st Respondent in that village. P.W. 10 is a resident of Odenthal, hamlet of Kadambur and says that R.W. 16 came and canvassed the votes of himself (P.W. 10) and others. P.W. 9 is a resident of Vadamananthur and says that both the 1st respondent and R.W. 16 came to his village and that each of them canvassed for the 1st Respondent.

26. P.W. 8 is the President of the Panchayat Board, Puthirampattu and says that R.W. 16 came with the 1st Respondent and asked him (P.W. 8) to vote for the 1st respondent. P.W. 11 is resident of Brahmakundam and spoke to canvassing by R.W. 16 in that village, a month prior to the polling day and also on the polling day at a tea-stall about 70 yards from the polling station, close to where they had parked the van of the 1st respondent with election placards on it.

27. P.W. 11 was polling agent of petitioner at Brahmakundam Polling Station. He says that he complained about the canvassing at the tea shop by R.W. 16 and R.W. 5 to the Sub-Inspector and that the latter threatened the two men with prosecution and sent them away. R.Ws. 5 and 16 deny this Brahmakundam tea shop incident. P.W. 11 admits that he did not complain to the Presiding Officer or any other authority, except for giving an oral complaint to the Sub-Inspector. The Sub-Inspector also has not been examined. P.W. 11 does not mention the name of any of the men who are alleged to have been approached by R.Ws. 16 and 5 for votes, though he says that many local men were approached like that. The evidence of P.W. 11 is not satisfactory. His version regarding the tea shop incident cannot be accepted, nor can his version about the canvassing by R.W. 16. P.W. 8 prevaricated in the witness-box when questioned as to whether he worked for the 1st respondent. So it is not safe to rely on his evidence either. P.W. 7 admitted that the petitioner appeared for him in a criminal case. But that is not a sufficient ground for disbelieving him. We do not find any reason for disbelieving this P.W. 7 or P.Ws. 3, 4, 9 and 10. These witnesses prove the following facts:—

(i) that the respondent requested R.W. 16 to do election work (canvassing) for him (1st respondent);

(ii) that the 1st respondent sent his van to R.W. 16 for his election purpose;

(iii) that accordingly R.W. 16 canvassed votes for the 1st respondent in the various villages and moved about for that purpose in the van and that, on some occasions, the 1st respondent also went with him.

28. The evidence of these witnesses is very strongly corroborated by the evidence of R.W. 16 himself. The following statements are found in his deposition:—

\* \* \* \* "The 1st respondent came to me and requested me to work for his election".

"I worked for the 1st respondent in the election by canvassing for one month or 20 days prior to the election \* \* \* \* \* I asked people in those villages to vote for the 1st respondent".

"He (1st Respondent) sent me his van, i.e. Nattar Estate Van. I went in it along with other workers and supporters of the 1st respondent to many villages and worked for the 1st respondent. I did such work in the villages in Pakkam and Sankarapuram firkas and also in three villages of Rishivendayam firkas, i.e. Pagandai, Enthai and Mayyanur. The 1st respondent's van was with me for about one week prior to the election".

29. The advocate for the 1st respondent asked us for permission to treat this witness as hostile. The following is an extract from the note made in the deposition: "Vakil for 1st respondent wants permission to treat this witness as hostile because he is a relative of Petitioner. The ground is not sufficient to treat the witness as hostile. For, witness is only a distant relative of petitioner and was cited and examined by 1st respondent of his own accord. We do not see any ground on which it can be said that witness is not desirous of speaking the truth. Witness's demeanour has been good and straightforward—not at all evasive. He answered all questions willingly and promptly, irrespective of as to whether the answer was favourable to one party or other. So, permission is refused by the Chairman and Members of the Tribunal".

30. Apart from the demeanour, there are also these other facts to be considered in weighing his evidence:—He is a respectable man of status and is the Isum Village Munsif of Ravuthanallur from 1920. He was a member of the District Board and also of the Taluk Board. He was a counting agent of the 5th respondent who was put up by the 1st respondent himself. (Exs. A. 8 and A. 9 are election notices issued by the 1st respondent jointly for Respondents 1 and 5). He is occupying a place of honour next to the 1st respondent in the photograph Ex. A. 19 which was taken soon after the declaration of election results. In this photograph, the only person who has been garlanded, other than the 1st respondent, is R.W. 16.

31. R.W. 10 is deeply interested in the 1st respondent. He is a relative. He canvassed for him for about a month and was present with him when his nomination paper was filed and was also proposer for the 1st respondent or 7th respondent. He says as follows:—"This photo was taken in memory of all these who worked in the election. It includes some who did not work for the 1st respondent. \* \* \* \*. Ex. A-19 is the only photo taken in which people who did election work for the 1st respondent are sitting". R.W. 10 himself is in the photograph. The 1st respondent who deposed (as R.W. 19) after R.W. 16 did not allege any motive for the latter (R.W. 16) deposing falsely against him.

32. R.Ws. 5, 10, 11, 13, 14, 15 and 19: (=1st Respondent) deposed that they all did canvassing work for the 1st respondent and that R.W. 16 did not. R.W. 19 stated that he asked R.W. 16 only for his vote and not to do canvassing, and also stated that he did not send his van to R.W. 16. All these witnesses are deeply interested in the 1st respondent, even apart from their having canvassed for him. R.W. 15 is a brother-in-law of the 1st respondent. He was a candidate and withdrew his candidature as he did not want to compete with the 1st respondent and wanted to be free to devote his time to work for the 1st respondent's election. R.W. 5 is the brother of R.W. 15. R.W. 10 is another relative who even says as follows: "R.W. 16 did not go with us canvassing. We just told him "Please give your votes to the 1st respondent. Also please get for him, the votes of people whom you know

I went with the 1st respondent and met him (R.W. 16) once. Another time I went without the 1st respondent and met him". But this evidence of R.W. 10 makes it highly probable that the 1st respondent asked R.W. 16 to canvass votes for him. R.W. 11 says that he is a member of the District Congress Committee and still worked for the 1st respondent against the petitioner who was the congress-candidate. He says: "I supported the 1st respondent as I wanted to see the petitioner defeated \* \* \* \*. I was one of the three counting agents of the 1st respondent". R.W. 14 is a relative of the 1st respondent. He says as follows:—"I do not know whether Rajayopal Naidu of Pudupatti went canvassing for the 1st respondent. \* \* \* \*. I do not know what he has much influence in Pakkam firka. My village is in Sankarapuram firka". But R.W. 15 says: He (R.W. 16) has influence in Pakkam and Sankarapuram firkas".

33. The evidence of the above witnesses R.Ws. 5, 10, 11, 13, 14, 15 and 19 is all interested and does not rebut the evidence of P.Ws 3, 4, 7, 9, 10 and 12 and R.W. 16. We find that the 1st respondent solicited and obtained the assistance of R.W. 16 for canvassing votes for him i.e. for the furtherance of the prospects of his (1st respondent's) election.

34 The next question is whether R.W. 16 was a person such as is contemplated by Section 123(8) of the Representation of the People Act. R.W. 16 was an Isum Village Munsif who was on leave from 1950. When he was canvassing, he was not actually discharging the duties in office as Village Munsif. Section 123(8) applies to "any person serving under the Government \* \* \* \* \* of any state \* \* \* \* \*". The learned Advocate for the 1st respondent contends that the word "serving" cannot apply to R.W. 16 and that the word must have been used by the Legislature only as referring to officers actually discharging their duties in office. Explanation (b) of this same sub-section 123(8) expressly states that "a person serving under the Government of any State" shall include "Village Munsif \* \* \* employed in that State \* \* \* \* \*". So section 123(8) will apply to R.W. 16 if he is "a Village Munsif employed in that state". A village Munsif on leave cannot be said to be not employed in the State. His employment (like that of any other servant of the state) started when he joined duty on the first appointment and will continue until he ceases to be a Village Munsif finally and once for all, by resignation, removal, etc. In IV House of Lords Cases (*Emmens vs. Elderton*) page 624 at 654, it has been observed as follows:—

"The word "employ", does not necessarily mean employed in actual work; but as observed in the judgment in the Court below, may be fulfilled by keeping him in the service". We hold that R.W. 16 was a person serving under the Government of Madras State at the time when the 1st respondent sought and obtained his assistance for canvassing votes for him during the last election and when he (R.W. 16) canvassed votes for him.

35. It is urged in the petition that the 1st respondent, on 4th November 1951 arranged for feeding all the village Officers and village menials who attended the Kallakurichi Conference and actually fed them in his house. The only evidence on this point consists of P.W. 2's deposition that R.W. 3 told him that the 1st respondent had made arrangements for feeding the delegates of the Conference, and the deposition of the petitioner (as P.W. 12) that he saw some

village menials being fed in the backyard of the 1st respondent's house. R.W. 3 flatly denies having told P.W. 2 that the 1st respondent had made arrangements to feed all the people. But he says that he does not know whether thotties and vettians were all fed in the backyard of the 1st respondent's house. The 1st respondent denies having fed any village menials in the backyard of his house and about feeding or making arrangements for feeding of any village officers. The petitioner's evidence about feeding of the village menials is vague and uncorroborated. We hold that it is not proved by satisfactory evidence that there was any feeding by the 1st respondent of any village Officers or village menials or arrangement to feed them.

36. In view of our finding in the foregoing paragraphs, we find on this issue as follows:—The 1st respondent obtained and procured the assistance of R.W. 16 who was a village officer of Ravuthanallur in Kallakurichi Taluk in South Arcot District for the furtherance of the prospects of his election and that there is no satisfactory evidence that he obtained or procured or attempted to obtain or procure the assistance of any other village officer.

37. *Issue 2.*—There is no reliable evidence of any undue influence on the part of the 1st respondent or any one of his behalf with his knowledge or connivance as contemplated under Section 123(2) of the Representation of the People Act. So we find on this issue that no undue influence has been proved by Petitioner as alleged.

38. *Issue 3.*—The facts relating to this issue are beyond dispute and are contained in paragraph 7 of this order. The 1st respondent admits that he gave the notices for printing. The printer could have put the name of the 1st respondent as the publisher. When he failed to do so, the printer himself has to be presumed to be the publisher also (page 367, Law of Elections and Election Petitions in India by Pandit Nanak Chand, 1951 Edition) so, we find that there was no illegal practice. We also find that the result of the election has not been materially affected by the issue of Ex. A-17.

39. *Issue 8.*—In the result, under Section 98(b) of the Representation of the People Act, we declare the election of the returned candidate, i.e., the 1st respondent to be void. We decline to grant the relief (b) asked for in paragraph 9 of the petition; for petitioner has not proved that he is entitled to such a relief. We grant relief (c) in the petition to the extent of awarding costs to the petitioner from the 1st respondent. Under Section 99(b) of the Representation of the People Act we fix the total amount of costs payable at Rs. 300/-. The 3rd respondent is not entitled to any relief. He will bear his own costs.

40. Under Section 99(a) (i) of the Representation of the People Act, we find:—

that only one corrupt practice has been proved to have been committed by the 1st respondent at the election, the nature of the corrupt practice, being, the obtaining by the candidate, i.e., the 1st respondent, the assistance for furtherance of the prospects of his election, from R. W.—16, a person serving under the Government of the Madras State (i.e., Isum Village Munsif) other than the giving of the vote by him (R.W.—16). No other corrupt practice alleged in the petition has been proved.

41. Under Section 99(a) (ii) we do not record the name of any person, as we have found at the trial only the 1st respondent to have been guilty of the corrupt practice under Section 123 (8).

42. We, however, think that it will be too great a punishment to disqualify the 1st respondent from voting. So we recommend exemption accordingly.

Pronounced in open Court, this the 19th day of February 1953.

(Sd.) H. A. AYYAR,

*Chairman.*

(Sd.) L. S. PARITHASARATHY AYYAR,

*Member.*

(Sd.) V. C. VIRARAGHAVAN,

*Member.*

#### APPENDIX.

The following exhibits were filed:—

*For Petitioner:—*

- |                  |   |
|------------------|---|
| A-1.             | Minutes Book of the South Arcot District Village Officers Committee.                            |
| A-1(a) 23-9-1951 | Resolutions passed at the 3rd conference of South Arcot District Village Officers' Association. |

A-2	29-9-1951	Printed copy of the Resolutions passed at the Conference held on 23-9-1951.
A-3		Extract from the Nominal Roll Register for the Village of Rowthanallur.
A-4		Extract from the Nominal Roll Register for the village of Ariyaperumanur.
A-5		Extract from the Nominal Roll Register for the Village of Siruvangur.
A-6	1-10-1951	Printed notice issued by 1st respondent regarding Election to Madras State Legislative Assembly.
A-7	26-10-1951	Printed notice issued by 1st respondent regarding Election to Madras State Legislative Assembly.
A-8		Printed notice by 1st Respondent regarding Election to state Legislative Assembly requesting voters to support him and Pavadai.
A-9		Placard (Printed) to support Respondent and Pavadai.
A-10		Letter from Pavadai (R-5) to the Returning Officer, Kallakurichi Constituency appointing V. Rajagopala Naidu as his counting agent with the acceptance of Sri V. Rajagopala Naidu.
A-11		Post Card by S. K. Deivanai Ammal for postal ballot paper (addressed to Returning Officer Voter No. 390).
A-12	26-12-1951	Post Card by Sri K. Sivaprakasam to the Returning Officer for Postal Ballot paper (Voter No. 389).
A-13		Counter foil of Postal ballot paper S. No. 8552 issued to S. K. Deivanai Ammal (Voter No. 390).
A-14		Counter foil of postal ballot paper S. No. 8559 issued to Sivaprakasam (Voter No. 389).
A-15	3-11-1951	Printed instructions to Presiding Officers, etc., by Chief Electoral Officer, Madras.
A-16	7-11-1951	Printed notice issued by V. T. Elaya Pillai (1st respondent) asking voters to support him.
A-17		Printed notice (Publisher's name not mentioned) to Support the 1st Respondent (Royal Press, Athur.)
A-18		Issue of the daily edition of Swadesmitran dated 30-9-1951 containing Proceedings of Village Officers' Conference of South Arcot.
A-19		Group Photograph with 1st respondent, R. Ws. 10 and 15 and Rajagopala Naidu (R.W-16) and others.
A-20		Statement of Election expenses of Sri V. T. Elaya Pillai (1st Respondent).
A-21		Bill of Royal Press, Athur for printing charges.
A-22		Printed notice published by Sri A. C. Sampath Ayyangar (Candidate for Election to Parliament) containing among others the names of Elaya Pillai (1st respondent) Vinaitheertha Pillai (R. W. 15) and T. A. Thathachari (R. W. 17) as his supporters.
A-23		Page 1 in Election expenses statement relating to receipt of money from K. Kutti Pillai of Vadakkanchal.
A-24	3-12-1951	Receipt for Rs. 240/- issued to 1st Respondent as hire charges for use of Loud-Speaker.
A-25	24-12-1951	Bill for Rs. 60/- towards Printing charges by the Royal Printing Works, Athur.
A-26	24-12-1951	Receipt for Rs. 60/- by the Royal Printing Works, Athur.
A-27		Form No. 6 by 1st Respondent appointing Vinaitheertha Pillai as Counting Agent.
A-28	20-1-1952	Form No. 6 by Pavadi (5th respondent) appointing Govindaswami Pillai as counting agent for 5th respondent.
A-29		Form No. 6 by 1st Respondent Elaya Pillai appointing K. K. Venkataramana Rao as counting agent of 1st respondent.
A-30		Marked copy of Electoral roll of Polling Station No. 53 Booth (1).

A-31		Marked copy of Electoral roll of Polling Station No. 53 Bo
A-32		Marked copy of Electoral roll of Polling Station No. 63 (1).
A-33		Marked copy of Electoral roll of Polling Station No. 63 Booth (2).
A-34		Marked copy of Electoral Roll of Polling Station No. 76 Booth (1).
A-35		Marked copy of Electoral Roll of Polling Station No. 76 Booth (2).
A-36		Form No. 14 account prepared by Returning Officer relating to Kallakurichi constituency.
A-37		Form No. 15 Account relating to K. Parthasarathy (Petitioner).
A-38		Form No. 15 Account relating to V. T. Elaya Pillai (1st respondent).
A-39		Form No. 15 Account relating to Ananthan (2nd respondent).
A-40		Form No. 15 Account relating to Govindan (3rd respondent).
A-41		Form No. 15 Account relating to Sri V. Muniswami (4th respondent).
A-42		Form No. 15 Account relating to Sri Pavadai (5th respondent).
A-43		Form No. 15 Account relating to Sri Ratnam (6th respondent).
A-44	30-3-1952	Revised Form No. 16 Account prepared by Returning Officer.
A-45	30-3-1952	Revised Statement of Invalid Votes prepared by Returning Officer.
A-46	22-1-1952	Certified copy of form No. 16 copy granted by Assistant Secretary for Chief Electoral Officer.

*For Respondent :-*

B-1	19-10-1951	Printed notice for the General Body meeting of Kallakurichi Branch of Tamil Nad Village Officers' Association.
B-2		Cyclostyled copy of the message of the Hon'ble the Chief Minister of Madras in Tamil, to all officers to be engaged in Elections.
B-3	7-11-1951	Cyclostyled circular issued by the Secretary of Kallakurichi village Officer's Association to all the Village Officers.
B-4	1-12-1951	Cyclostyled circular issued by the Secretary of Kallakurichi village Officers' Association to all the Village Officers.
B-5		Copy of message of the Hon'ble the Chief Minister of Madras to all officers to be engaged in Election work.
B-6	9-11-1951	Gazette Extraordinary fixing the dates for nominations, Scrutiny and election for the State Legislative Assembly of Madras.
B-7	11-11-51	Office copy of circular by the Revenue Divisional Officer. Thirukoilur to the Tahsildars and Deputy Tahsildars of the Division.
B-8	7-1-1952	Office copy of letter by the Revenue Divisional Officer Tirukoilur to the Collector of South Arcot.
B-9	9-1-1952	Post copy of Telegram from the Additional Secretary to Government to the Collector of Cuddalore.
B-10	22-1-1952	Office copy of letter by the Revenue Divisional Officer, Tirukoilur to the Collector of South Arcot.
B-11	16-11-1951	Copy of Letter by the Tahsildar of Kallakurichi to the Loan Tahsildar and Taluk Supply Officer, Kallakurichi.
B-12		Copy of Printed circular issued by Tahsildar of Kallakurichi to all village Officers regarding arrangements to be made for Election.
B-13	29-11-1952	Post Card by Srinivasam Pillai, Treasurer of District Village Officer's Association to R. W. 3 to attend meeting of Executive Committee at Villupuram.
B-14		Receipt by Periaswami Pillai to R. W. 3 for having taken the minutes book from R. W. 3 for being taken to Villupuram.
B-15		Printed agenda for Village Officers' meeting at Cuddalore on 23-9-1951.



- A-15(a) Appeal by the Secretary and Executive Committee members at Page 2 of Ex. B-15.
- B-16 Minutes book of District Bar Federation, Cuddalore containing, minutes of the Committee meeting on 23-9-1951.
- B-16(a) Resolutions passed at the meeting of 23-9-1951.
- B-17 True copy of the Resolutions passed at the meeting of the South Arcot Bar Federation, Cuddalore.

## THE FOLLOWING WITNESSES WERE EXAMINED

*For Petitioner :—*

1. Janab Hamid Sahib,
2. Sri Ramaswami Ayyar,
3. Sri Kumaraswami Pillai,
4. Sri Sadasivam Pillai,
5. Sri Kuppuswami Udayar,
6. Sri Duraiswami Udayar.
7. Sri Kuppuswami Goundar.
8. Sri Rangaswami Naidu.
9. Sri Ramalingam.
10. Sri Mannankatty Goundar.
11. Sri Duraiswami Naidu.
12. Sri K. Parthasarathi (Petitioner).

*For Respondent :—*

1. Sri V. K. C. Natarajan (Revenue Divisional Officer, Tirukoyilur).
2. Sri D. Rajarathinam (Huzur Sarishtadar, South Arcot Collectorate).
3. Sri Arumugam Pillai.
4. Sri Rangaramanujam Chettiar.
5. Sri Amavasiya Pillai.
6. Sri Rangaswami Naidu.
7. Sri T. R. Chakrapani Ayyangar,
8. Sri Ramaswami Pillai.
9. Sri Thangavelu Pillai.
10. Sri Ammavasiya Pillai.
11. Sri Velayutham Pillai.
12. Sri Venugopala Iyer.
13. Sri Paramasivam Pillai.
14. Sri Narayana Pillai.
15. Sri Vinaitheertha Pillai (7th Respondent).
16. Sri Rajagopala Niadu.
17. Sri T. A. Thathachari.
18. Sri S. Ramamurthi Iyer.
19. Sri V. T. Elaya Pillai (1st respondent).

(Sd.) H. A. AYYAR, *Chairman.*(Sd.) L. S. PARTHASARATHY AYYAR, *Member*(Sd.) V. C. VIRARAGHAVAN, *Member.*

[No. 19/108/52-Elec. III.]

**S.R.O. 398.**—WHEREAS the election of Shri Jagdish Chandra Joshi, son of Shri Bhawani Dutt Joshi, resident of Rewa, as a member of the Legislative Assembly of the State of Vindhya Pradesh from the Rewa constituency of that Assembly, has been called in question by two election petitions duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Hafiz Faizan Khan of 473 Ghoghar, Rewa, and Shri Prakash Narain of Uparahati, Rewa, Vindhya Pradesh respectively;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of sections 86 and 87 of the said Act, for the trial of the said petitions has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the Election Petition filed by Shri Prakash Narain;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

**BEFORE THE ELECTION TRIBUNAL, VINDHYA PRADESH AT REWA.**

**ELECTION PETITION No. 5/174-A OF 1952.**

**Shri Prakash Narain of Rewa—Petitioner.**

*versus*

- (1) Shri Jagdish Chandra Joshi of Rewa,
- (2) Shri Hafiz Mohd. Faizan Khan of Rewa,
- (3) Shri Panna Lal Ji of Rewa,
- (4) Shrimati Vishnukanta Ji Usha of Rewa,
- (5) Shri Brijendra Nath Chaturvedi of Rewa,
- (6) Shri Shambhu Nath Ji Shukla of Rewa,
- (7) Shri Vaidya Jamuna Prasad Ji of Rewa, and
- (8) Shri Pancham Lal Jain of Rewa—Respondents.

**ORDER No. 4**

1. The Petitioner, as well as the 8 Respondents in this case, were duly nominated candidates for election to the Legislative Assembly of Vindhya Pradesh from Rewa Constituency. Respondent No. 1 was declared elected. The petitioner alleges to have secured the next highest votes at the said poll. The election of Respondent No. 1 to V. P. Legislative Assembly is sought to be set aside as being void mainly on the ground that he was, at the time of his nomination, less than 25 years of age, and therefore his nomination paper was improperly accepted and that the result of this election has been materially affected by such improper acceptance of his nomination paper. The other grounds stated in the petition for vitiating the election of Respondent No. 1 are the exercise of undue influence upon the voters, the commission of some corrupt practices, and the filing of false and irregular return of expenses by Respondent No. 1. The Petitioner has further prayed that, after setting aside the election of Respondent No. 1 to V. P. Legislative Assembly he (i.e. the petitioner) may be declared to be duly elected as he had polled the next highest number of votes.

2. Respondent No. 1 alone has opposed the petition. He contends that he was over 25 years of age when his nomination paper was presented to the Returning Officer. He further avers that his age was entered as 25 years in the electoral roll which is a conclusive piece of evidence on the point and that the Election Tribunal cannot go behind the same. Also it is urged in his written statement that Article 173 of the Constitution of India, mentioned in the petition, does not apply to Part C States but is applicable only to Part A States. All other allegations about the exercise of undue influence, corrupt practices and filing of false return of expense have been categorically denied by respondent No. 1.

3. Respondent Nos. 2 and 8 filed written statements but did not appear to contest the case at the subsequent hearings, Respondent No. 2 endorsed the main allegation of the petitioner as contained in his petition, while respondent No. 8 supported the pleas of respdt. No. 1.

4. On the above pleas the following issues have been framed:—

I. (1) Was respondent No. 1 below 25 years of age at the time of his nomination and as such not qualified to stand as candidate for the Legislative Assembly.

(2) Has the result of election been materially affected thereby?

(3) Is the Tribunal debarred from going behind the entry in electoral roll in respect of the age of respondent No. 1?

II. (1) Has the election not been a free election for reason of the fact that corrupt practices of removal of ballot papers, impersonation and undue influence etc. were practised on behalf of and with the connivance of respondent No. 1 at an extensive scale?

(2) If so, what is the effect?

III. Is the return of expenses filed by respondent No. 1 false in material particulars? If so, what is the effect?

IV. (1) Should the election of respondent No. 1 be set aside as being void?

(2) Is the petitioner entitled to be declared as having been elected?

5. Parties have confined their respective evidence and arguments to Issue No. 1 and IV only as ordered by this Tribunal. We propose to deal, first, with the legal question about the jurisdiction of this Tribunal to examine the real age of respondent No. 1 i.e. part 3 of Issue No. 1.

6. It is contended on behalf of the respondent No. 1 that under section 36 sub-section 7(a) the entry in the Electoral roll was bound to be treated as conclusive evidence of the right of any elector named in the entry to stand for election or to subscribe the nomination paper, as the case may be, unless it is proved that the candidate is disqualified under the Constitution or this Act. It is further urged that under the Scheme of this Act qualification and disqualification have been classified separately and the one should not be confused with the other. That being so, only the question of disqualification could be considered at the time of scrutiny and the question of qualification stood concluded by the entry in the electoral roll. Consequently the returning officers' verdict could not legally be other than what it was, namely, that the respondent No. 1 was qualified for standing for election. This argument which sounds plausible as far as it goes, is pushed forward to suggest that the acceptance of the nomination paper having been proper under section 36 of the Act, its propriety cannot be challenged in these proceedings. In this view of the matter, it is further contended, this Tribunal is debarred from examining the question of real age of the respondent No. 1. This argument is re-enforced by submitting that the qualifying provisions of the Constitutions do not apply to Part C State which vindhya Pradesh is.

7. The whole argument summarised above completely loses sight of sub-section 2 (C) of section 100 of R.P. Act, 1951, section 7 of the Government of Part C States Act 1951 (Act XLIX of 1951) and the Representation of the People (Application to Part C States) Order, 1951 made by the President according to Law extending the application of the provisions of Part I and Parts III to XI of the R.P. Act, 1951 to Part C States subject to the modifications specified in the Schedule to this order. First of all, sub-section 2(C) to section 100 of R.P. Act, 1951 which applied to all States provides as follows:—

"....., if the Tribunal is of opinion—(C) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form;

The Tribunal shall declare the election of the returned candidate to be void." The relevant clause "or of any other Act or rules relating to the election" has been underlined above by us. Section 7 of the Government of Part C States Act 1951 (Act XLIX of 1951) provides, *inter alia*, the minimum age of 25 years as one of the essential qualifications for membership of the Legislative Assembly of Part C States. This corresponds to section 5 of the R. P. Act 1951 read with article 173 of the Constitution. It is uncontroversial that the words "any other Act or rules relating to the election" in section 100 (2) C are wide enough to include within their ambit the Government of Part C States Act, 1951 because this Act provides for the Constitutions of Legislative Assembly in Part C States, prescribes qualifications for their membership and makes Part I and Parts III and XI of the R.P. Act 1951 applicable to Part C States.

8. Now two questions emerge for consideration; (1) was there non-compliance with any of the provisions of the Act XLIX of 1951 (Government of Part C States Act)? and (2) if there was, has the result of this election been materially affected thereby? It may safely be said that there was a flagrant non-compliance with the provisions of section 7 of this Act, if the age of the respondent No. 1 was below 25 years at the time of his nomination. In the case of Part A States, if the age of a candidate is below 25 years it would be an infringement of Act 173 of the Constitution and in the case of Part C States, it would be an infringement of Section 7 adverted to above. The process of election begins with nomination and ends with the declaration of the results. Non-compliance with the provisions of a statute relating to election at the stage of nomination in the vital matter of age of a candidate is obviously hit by clause c to sub-section (2) of

Tribunals under this Act. The second question about effect of the non-compliance section 100 of R.P. Act, 1951, and is, therefore, within the powers of Election with the provisions of the law referred to above is covered by Issue No. I(2) and would be dealt with in its proper place. At this stage the question of jurisdiction or powers of the Tribunal is under consideration.

9. We have tried to arrive at the conclusions set out above on a careful examination of the relevant sections of the R.P. Act 1951 read with appropriate sections of the Government of Part C States and the Representation of the People (Application to Part C States) Order 1951 untrammelled by precedents and the opinions of competent commentators. But the support which we get for this view from these sources is simply overwhelming.

10. For proper appreciation of what may be described as case law on this subject, the relevant provisions of law in force at the time when these cases were decided may well be borne in mind. The provisions relating to the qualifying age of candidates, the scrutiny of nominations and the powers of Election Tribunals, regarding the determination of real age of candidates are more or less identical in the old and existing laws. It is, therefore, safe enough to get some guidance from the interpretation of *para materia* statutes.

11. In the case of Nawab Sir K. G. M. Farouki *versus* M. H. Bahar Chaudhury and others decided on 21st March 1945 Bengal Legislative Assembly Constituency reported at page 202 in Sen and Poddar's Election Cases (1935-51) the learned Commissioners held that the Election Tribunal could go behind the electoral roll to ascertain the possession of actual qualifications by a candidate for entry on the roll but the Returning Officer could not. This case was, however, decided on the basis of some words used in the Corrupt Practices Order 1936 which has not been expressly used in the R. P. Act 1951, but are covered by comprehensive language of Section 100 (2) c.

12. In the following decisions it was held that Election Tribunal could and should ascertain the real age of the candidate concerned:—

Keshoram Vs. Bishundas (Doabia's Election Cases, Vol. I, page 99) Tara Prasad Vs. R. S. Debi Charan Barwa (Doabia's Election Cases Vol. I, page 405).

Mulla Singh Vs. Changu Ram (Doabia's Election Cases Vol. II, page 268).

13. The same view has been expressed by two commentators on Election Laws viz. H. S. Doabia at page 14 1952 Edition and Pt. Nanakchand at page 32 1952 edition.

14. We, therefore, hold that the Tribunal has power to ascertain and determine the real age of the respondent No. 1 at the time of his nomination and is not debarred from going behind the entry in the electoral roll. Hence this Issue No. I(3) is found in the negative.

15. Before dealing with the main issue of fact relating to actual age of the Respondent No. 1 at the time of nomination, we would like to dispose of the argument advanced on behalf of the petitioner that the age of the respondent No. 1 should have been 25 years on the qualifying date as laid down in Section 21 of R. P. Act 1950 i.e. on the first of March 1950. We are unable to accept this argument because this 'qualifying' date refers to an elector and not to a candidate for election. In the case of the latter the qualifying date is the date of nomination.

16. Issue I (i).—*Age of the respondent 1 on the date of his nomination.*—We now enter into the question of fact viz. as to whether respondent No. 1 was below 25 years of age at the time of his nomination and as such not qualified to stand as a candidate for the V.P. Legislative Assembly. Since the age of respondent No. 1 as entered in the electoral roll Ex. R.W. 1/8 is 25 years, the onus of proving that he was below that age primarily lay on the petitioner. The petitioner has in discharge of that onus, produced oral and documentary evidence. Ex. P.W. 1/1 is the certified copy of Government Gazette Part 2(a), dated 10th July, 1943. In the said gazette the result of the High School Examination in which Respondent No. 1 appeared has been published. The date of birth of Shri Jagdish Chandra Joshi Respondent 1 noted therein is 25th September 1930. Then the three applications for admission submitted by respondent No. 1 have been called for and exhibited in this case. Ex. P.W. 2/1 is his application for admission to the IX Class of Durbar College, Rewa which is dated 14th July 1941, in this application the date of birth of respondent No. 1 is given as 25th September 1930. One G. S. Joshi has signed this application for Shri Anand Chand Joshi the guardian of respondent No. 1. Similarly, in the application for admission to the B.A. Class of Durbar College, Rewa, Ex. P.W. 2/2, respondent No. 1 is

shown to have been born on 25th September, 1930. Mrs. Shanta Joshi has signed this application for her husband Shri Anand Chand Joshi, the admitted guardian of respondent No. 1. The signatures of Shri G. S. Joshi, Mrs. Shanta Joshi and of respondent No. 1 on these applications as also on his application for admission to the LL.B. Previous Class of Surbar College, Rewa Ex. P.W. 2/3 are admitted. It is further admitted that Shri G. S. Joshi was a cousin of respondent No. 1 some 8 years older than him. In the application P.W. 2/3 the column meant for stating the date of birth of applicant has been left blank. Further it does not bear the signature of any guardian of respondent No. 1.

The petitioner has further produced the voters list of Ward No. 2 of Rewa Municipality which, according to P.W. 7 the Head Clerk of the Rewa Municipal Development Office was prepared from March to August, 1946. In this voters' list the names of Shri Anand Chand Joshi, cousin and guardian of respondent No. 1 along with his family members are entered under serial Nos. 446 to 449. The name of respondent No. 1 does not find place in this voters list, because he was then below 21 years of age, as contended by the petitioner. The qualification of an elector under Section 21 of Rewa State Municipalities Act, 48, has been laid down as 21 years, under clause c of the said section. In the Assembly voters list Ex. P/2 as originally prepared the age of respondent No. 2 was entered as 22 years *vide* S.N. 548 at page 6 of Ex. P.2. the age of respondent No. 1 was subsequently corrected to 25 years as appears from Sudhi Patra No. 2.

The petitioner has further examined P.W. 6 Shri Ram Bahari, an Accountant in the Advocate General's Office at Rewa. As stated by this witness the late Pandit Bhawani Dutt Joshi father of respondent No. 1 was the Advocate General of Rewa State from 10-6-32 till his death in June 1941. During the period of his office the witness asserts to have often visited the Advocate General Shri Bhawani Dutt Joshi at his bungalow. On these visits he used to see and meet respondent No. 1 and his elder brother Shri Kaushal Chand Joshi. According to this witness the age of respondent No. 1 known by his pet name 'Munna', was at that time i.e. in 1932-33, 3 or 4 years only. Of course the witness has no personal knowledge of the date of birth of respondent No. 1, and so he has given only his rough estimate of the respondent's age, on the basis of the fact that respondent No. 1 had then unshaved hair on his head.

Any way the documentary evidence coupled with the verbal testimony of P.W. 8 have the effect of shifting the onus of the question of the contesting the respondent's age to the other side, namely to the respondent No. 1. The oral evidence produced by Respondent No. 1 consists of the statement of himself (R.W. 4), his mother (R.W. 5), Shri Kanta Singh R.W. 1 a practising lawyer of Satna Bar, Shri Narbada Prasad, R.W. 3 and Shri Lal Bhargavendra Singh R.W. 8, R.W. 1 Shri Nowta Singh started his practice at Satna as a junior of the late Pt. Bhawani Dutt Joshi, father of respondent No. 1 and so he used to visit Shri Bhawani Dutt Joshi's house very frequently. As stated by this witness respondent No. 1 was born in Satna in 1925 i.e. the year in which the witness was married. As stated in cross examination by this witness the eldest son of Pt. Bhawani Dutt Joshi namely Shri Kaushal Chand, was born when this witness was aged about 20 years. He further says that the difference between the ages of respondent No. 1 and his elder brother is about 7 years. The present age of R.W. 1 is 51 years. So Shri Kaushal Chand would be now about 31 years old and deducting therefrom the difference of 7 years, the present age of respondent No. 1 in January, 1953, would be 24 years. We have to accept the testimony of this witness with great caution, inasmuch as he admits that he treated the father of respondent No. 1 as his teacher.

R. W. 3 Shri Narbada Prasad had a Thekudari business and in connection with his contracts he asserts to have been visiting the house of Shri Bhawani Dutt Joshi while the latter was living in Kasnuta House at Rewa in 1925. The witness avers that respondent No. 1 was born in 1925. In his cross-examination he affirms to have attended the Baruhaun ceremony of respondent No. 1 which was celebrated some 12 days after his birth. He further says that Dusehra festival fell after the Baruhaun ceremony. The date of birth of respondent No. 1, as given in his microscope, Ex. D1 is Ausia Shukla 8 1932 S. So a day or two only intervened between the date of the birth of Shri Jagdish Chandra Joshi, as noted in Ex. D1, and the Dusehra. Apparently therefore the Baruhaun ceremony could not have been celebrated before Dusehra. In face of this discrepancy in the evidence of R.W. 3 we cannot rely on his evidence on the point of the contesting respondent's date of birth.

Next. Shrimati Canga Debi (R.W.5), being the mother of the contesting respondent No. 1, is a highly interested in as much as the career of her son is involved in the present case. Of course out of all the R.Ws. she would be a very competent witness to depose on the point of the contesting respondent's age, which she gives as Kuar Shukla Asmriti 1925. She has also stated the age of her other two sons namely Kaushal and Chuma. She remembers the year of Kaushal's birth because

of the armistice of the German War, and she remembers the year of Munna (Respondent No. 1's) birth "because it was in that year that Kamta Singh Vakil of Satna, who was on visiting terms in the family since his early age, got married". Although she could give the year of armistice of the first World War, yet she does not remember the year in which the Second World War began or ended. Further R.W.5 could give her own age when Kausnar was born, but she does not remember what was her age at the time of Munna's birth. As stated by R.W.5 in her examination in chief, she celebrates the birth day ceremony of her three sons every year still, curiously enough, respondent No. 1 (R.W. 4) in the very opening line of his cross examination swears that he first learnt of his real age from his mother when he was studying Law in 1947-49. R.W.4 has also offered an explanation of the entries in the official gazette Ex. P.W. 1/1 and his applications for admission P.W. 2/2 and P.W. 2/3. It reads thus "my father and other members of my family wanted to send me for the I.C.S. competitive Examination. The ages for the I.C.S. Examination were 21 to 23.....the date of birth was mentioned in these documents with a view to enable me to appear in the competitive examination." "My date of birth is Ausin Shukla Ashtimi Sambat 1982 S. corresponding to 25th September 1925". As evidenced by Ex. P.W.2/4, respondent No.1 passed his B.A. examination in 1947, and LL.B. in 1949. Of course respondent No. 1 alleges to have given up the idea of sitting at Comp. examination & entered Politics in 1946-47. If we were to accept the date of his birth as September 1925, he passed B.A. examination when he was 21 years old and was below 22 years of age. He could still have two chances for appearing at the I.C.S. Examination. As against this, according to the date of birth stated in the applications for his admission P.W.2/2 and P.W.2/3, he was only 17 years of age when he passed his B.A. Examination. He had to wait for 3 or 4 years in order to be of the qualifying age for sitting at the I.C.S. Examination. So the explanation as put forward by R.W. 4 for minimising and understating his age in the applications for admission by such a large period 5 years does not appear to us to be plausible, and hence we are unable to accept the same. The aforesaid explanation of Respondent No. 1 (R.W. 4) becomes all the more unacceptable in view of the fact that he passed his B.A. in English, Hindi and Sanskrit vide Ex. P.W. 2/4. A combination of these subjects would ordinarily not enable him to compete at the I.C.S. Examination. Lastly the Respondent has examined Lal Bhargavendra Singh, brother of the present Maharaja of Nagod, on Commission. As stated by this witness (R.W.5), the late Shri Bhawan Dutt Joshi father of respondent 1 was his tutor and guardian and so he has known Respondent 1 from his childhood. He has given the year of Respondent's birth in 1925 as Gajendra Singh, son of R.W. 3, is of the age of Respondent 1. He alleges to have first seen Respondent 1 when the latter was 2 or 4 years old according to his estimate of the Respondent's age. He never visited Shri Bhawan Dutt Joshi at his house in Rewa nor did he attend the Mundan or Upanayana ceremony of this Respondent. He cannot give the year from which Shri Bhawan Dutt began to practise or was appointed the Advocate General. Thus we find that the oral evidence of the Respondent's witnesses are not sufficient to prove his age to be 25 years in December 1950, as none of the R.W.'s examined on this point can be said to be independent and disinterested.

The documentary evidence produced by and exhibited on behalf of respondent No. 1 are his horoscope Ex. D1, Panchang of 1982 (R.W.2/1), the medical opinion of Dr. Dixit (Ex. R.W.1/1) and 5 skiagrams and 4 Dental Plates taken by Dr. Chatterji. Purshotam Pathak R.W. 2 is the astrologer who prepared the horoscope Ex. D1. He affirms to have prepared it within a month of the date of respondent's birth noted therein. Ex.D1 is a small horoscope which R.W.2 calls a 'Chinnh'. This witness has no direct knowledge of the date of birth given in this horoscope. He says Jiwanand, the family Purohit of the respondent, gave the date of birth etc. to the father of this witness, and R.W.2 prepared this horoscope on the basis of such information. The horoscope or 'Chinnh' Ex. D1 does not contain Nakshatra in which respondent No. 1 was born, nor the name of father and grand father of the child to which it relates. Even the Rashi name of respondent No.1 is not given in the horoscope. On the contrary his present name (viz. Jagdish Chandra Johsi) is mentioned therein. Further, according to the Panchang of 1982 Sambat Ex. P.W. 4/1, planet 'Budha' (Mercury) entered Kanya Rashi at about 3 A.M. of the night between Friday and Saturday, whereas in Ex. D1 respondent No. 1 is shown to have born on Ausin Shukla 8 Friday some 26 minutes after the sun rise while Budha was in Kanya Rashi. With a view to remove this discrepancy R.W.2, the Jotishi examined by the respondent, has in his Panchang apparently drawn a line joining the printed words 'Kanya yang gyan 31-' appearing in his Panchang against 8th Ausin Friday with the printed lines above. Then according to Baidehi Saran P.W. 4 who is a Raj Jotishi to His Highness the Maharaja of Rewa the complexion of respondent No. 1 should have been neither very fair nor very dark since Budha has been shown in Ex. D1 as the ruling planet. The witness has relied upon shlokas

Birhat Jatak, a standard book on astrology. We are not necessarily guided by the astrological inferences which may be questionable. The paper on which Ex. D1 has been written appears to be very old, but the ink with which it has been written looks rather fresh. So the omissions and the intrinsic lacuna in the horoscope Ex. D1, as pointed out above, go a long way to render the horoscope Ex. D1 unreliable. It is moreover a matter of common knowledge that horoscope can be prepared at any stage of a man's life according to the date of birth given by him. I may here observe that according to Shrimati Ganga Debi R.W. 5 Jiwanand left house at Satna only two or three days after the birth of Respondent No. 1. It is difficult to believe that Jiwanand named Respondent No. 1 as Jagdish Chandra ii, within a day or two of his birth without ascertaining the Lagna or Rashi in which he was born. So, considering the evidence of both parties on this point and circumstances mentioned above we find that the horoscope Ex. D1 is not sufficient to prove the age of respondent No. 1 or the date of birth as given therein.

Next the Respondent has relied upon the medical opinion of Dr. R. S. Dixit who has been examined on commission as R.W. 6. Dr. Dixit's opinion has been exhibited in this case as Ex. R.W. 1/1. As noted therein no documentary proof of his age was produced by Respondent No. 1 before the doctor, not even the horoscope Ex. D1 which, according to the statement of R.W. 5, was in the possession of Respondent No. 1 since July 1952. From his observation of Respondent No. 1 in the matter of his height, weight, teeth, hairs and skiagrams Dr. Dixit opines that the 'School Certificate age of 22 years and 17 days is understated. To say that his age is 27 years or there about is a difficult problem. The partial fusion of sagittal sutures of the skull and the partial union of the pieces of the body of the gladiolus, the wearing of the crown of grinder teeth and the complete ossification of the roots of the wisdom teeth is more in favour of his age being 27 years'. Let us now see if the factors on which Dr. Dixit has based his opinion regarding the present age of Respondent No. 1 really support and justify his opinion.

As regards the height and weight of a person it is clear, from Taylor's principles and Practice of Medical Jurisprudence Vol. II. Edition of 1948, page 134 that on the subject of age, "height and weight are too variable to be of much use". Dr. Dixit has admitted that he did not attach very great importance to height and weight in the determination of age". Similarly as regards teeth, Dr. Dixit admits that "teeth by themselves are not definite evidence of age". According to the table of Dentation given on page 100 of Taylor's book quoted above, all teeth should erupt by about 21 years and "the roots should be fully calcified by the twenty-third year, even when eruption has not taken place". Dr. M. K. De (P.W. 13) is of the opinion that "all the 32 teeth come out between the age of 17 to 25 and the roots of all wisdom teeth calcify about puberty. The age of puberty in male sex is between fourteen to eighteen years".

It is observed on page 135 of Taylor's Book quoted above, "In the absence of documentary proof or of some very exceptional circumstantial evidence, it is impossible to swear to the exact age of an adult".

Modi's opinion is that all teeth come out between the ages of 17 and 20 years.

There remain the question of "the partial fusion of sagittal suture of the skull and the partial union of the pieces of the body of the gladiolus, referred to in Dr. Dixit's in Ex. R.W. 1/1 we observe as follows—

At page 49 of Lyon's Medical Jurisprudence we find a table in which fusion of vertebral border with inferior angle of scapula is shown to take place at the age of 15 years. According to Dr. De and Dixit the said fusion takes place between the age of 20 and 25 years. As noted in Dr. Dixit's report the skiagram of sternum of Respondent No. 1's is not very clear. The last piece of gladiolus is still not united with the body. Other pieces have apparently united. Dr. Dixit (R.W. 6) admits in his cross examination that all the pieces of gladiolus should unite by the age of 25. There is a clear note at page 35 of Modi's Jurisprudence to the effect that "the four middle pieces of the sternum which constitutes its body fuse with one another from below to upwards between 14 and 25 years of age. The partial fusion of sagittal sutures does not lead us to any definite conclusion, nor the non-ossification of sutures because ossification of sutures starts from the age of 30, as stated by Dr. Dixit and closing of sutures are subject to great variations (*vide* Gray's Anatomy, 24th Edition at page 305). Dr. De (R.W. 13) has estimated the age of Respondent No. 1 to be below 25 years on the basis of the fact that the sternum have not united.

Hence we find that the data which form the basis of Dr. Dixit's opinion that the present age of Respondent No. 1 is "about 27 years" do not necessarily warrant such conclusion about respondent's age. So we cannot base our finding on this issue on the evidence and report of Dr. Dixit in this matter, particularly when his evidence as an Expert is contradicted by another experienced Radiologist Dr. De (R.W. 13). Hence taking into consideration all the material and evidence before

us we are constrained to hold that Respondent No. 1's date of birth was 25 September 1930. So he was below 25 years of age when his nomination paper was presented before the Returning Officer in December 1950, and as such he was not qualified to stand as a candidate for the election to the State Legislative Assembly. We, therefore, decide Part (1) of Issue No. 1 in petitioner's favour.

Next, we come to the question covered by part (2) of Issue No. 1 as to whether the result of the election has been materially affected by reason of the fact that an unqualified candidate namely Respondent No. 1, had been nominated for seat in the Legislative Assembly and that he has been declared elected, he secured 1,635 votes, as stated by the Petitioner P.W. 5 in absence of Respondent 1 being a candidate for the election, these votes would have certainly been distributed amongst the other qualified candidates. We cannot here speculate as to who would have secured such votes. Obviously, therefore the result of this election has been materially affected by the nomination of Respondent No. 1 as a candidate because an unqualified candidate, as far as the age is concerned, was actually elected.

We have found above that Jagdish Chandra Joshi (Respondent No. 1) was below 25 years of age at the time of his nomination for a seat to the V. P. Legislative Assembly, which age is prescribed by Sec. 7(c) of the Govt. of Part C States Act as one of the requisite qualification for this purpose. We have found further that the result of the Election has been materially affected by the improper acceptance of his nomination.

The result is that we declare that the Election of Shri Jagdish Chandra Joshi to the V. P. Legislative Assembly is void.

Having disposed of Part 1 of Issue No. IV and having declared the election of Respondent No. 1 as void, we proceed to decide Part 2 of this Issue, which relates to the claim of the petitioner that he should be declared to have been elected. The grounds on which such declaration can be made are set out in section 101 of the R.P. Act. The first ground is that in fact such candidate should receive a major of valid votes. This ground does not exist in this case. Actually the petitioner received a much smaller number of votes than the Respondent No. 1 and no mistake in counting is alleged or detected. On behalf of the petitioner it is suggested that the votes received by him were valid while the votes polled in favour of the Respondent No. 1 should be invalid. We are not prepared to hold on the materials on record that those votes were invalid. In fact, the alleged invalidity of these votes is sought to be based on the ground of the want of qualification regarding the statutory age of the respondent. Votes as such were not invalid in any sense and this argument purports to stretch beyond proper limits the plain meaning of word. This view finds support from the decision already referred to above in connection with another issue (Nawab Sir K. G. M. Faruqui *versus* M. R. Paher Chaudhuri reported at page 202 of Sen and Poddar's Election Cases, 1235-51). This question has been elaborately discussed in this decision and we are in respectful agreement with the views referred by the learned Commissioner (E. C. Ground, President and Saidur Rahman). The first ground, therefore, does not apply to this case.

The second ground according to section 101 is that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner would have obtained a majority of valid votes. The petitioner's claim is not pressed on this ground at all and there are no materials on the record to justify his claim on this ground. The result is that the petitioner cannot be declared to have been elected and this issue is found against him.

No order under Section 99 1(a) of the R.P. Act 1951 is called for in this case.

The petitioner has succeeded as far as the first relief is concerned. We fix the costs of the petitioner as Rs. 350 (Rupees Three hundred and Fifty only), and direct that the Respondent No. 1 shall pay the costs amounting to Rs. 350 to the Petitioner. Shri Satya Deo appeared for petitioner and Shri G. P. Singh, Lal P Singh Shri S. N. Tiwari for Respondent No. 1.

ANNOUNCED

The 19th February, 1953.

(Sd.) E. A. M. MUKERJI, *Chairman*.  
(Sd.) S. L. SRIVASTAVA, *Member*.  
(Sd.) U. S. PRASAD, *Member*.

[No. 19/174-A/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.